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8 **IN THE UNITED STATES DISTRICT COURT**  
9 **FOR THE EASTERN DISTRICT OF CALIFORNIA**  
10

11 DOUG SEHER,

No. CIV S-03-1811-CMK

12 Plaintiff,

13 vs.

ORDER

14 MICHAEL J. ASTRUE,  
Commissioner of Social Security,

15 Defendant.  
16 \_\_\_\_\_/

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18 Plaintiff, who is proceeding with retained counsel, brings this action for judicial  
19 review of a final decision of the Commissioner of Social Security under 42 U.S.C. § 405(g).

20 On March 16, 2006, the court entered judgment in favor of defendant and against  
21 plaintiff. Plaintiff appealed and, on August 21, 2007, the Ninth Circuit Court of Appeal issued a  
22 decision reversing this court's judgment and remanding with instructions that this matter be  
23 remanded to the agency for further proceedings. The Ninth Circuit concluded:

24 . . . Because the hypothetical [question posed to the vocational expert] was  
25 not supported by the record, the vocational expert's opinion "has no  
26 evidentiary value." (citation omitted). Without that evidence, the  
Commissioner did not meet his burden at step five of showing that Seher  
could not perform substantial gainful employment. (citation omitted). We

1 therefore set aside the denial of benefits and remand for further  
2 administrative proceedings in which the full set of limitations is posed in a  
hypothetical to a vocational expert.

3 The appellate court rejected plaintiff's other claims of error. The Ninth Circuit remanded the  
4 case "... with instructions to remand to the Commissioner for further proceedings" consistent  
5 with its opinion.

6 Accordingly, IT IS HEREBY ORDERED that:

7 1. This matter is remanded for further proceedings consistent with the Ninth  
8 Circuit's opinion; and

9 2. The Clerk of the Court is directed to enter judgment and close this file.

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11 DATED: September 27, 2007

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13 **CRAIG M. KELLISON**  
UNITED STATES MAGISTRATE JUDGE  
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